

Two opposing commitments?

Towards a synchronised protection of biodiversity and indigenous peoples' rights

Mauro Barelli

2020-06-29T09:00:25

Federica Cittadino's book examines the tension that underpins the relationship between two key commitments undertaken by the international community, namely the commitment to protect indigenous people's rights and the commitment to protect biodiversity. This book becomes especially relevant at a time when we are frequently reminded of the difficulty of reconciling the two ensuing [legal regimes](#). What, then, can be done to prevent governments' actions, taken in the pursuit of biodiversity objectives, from disrespecting indigenous peoples' rights?

From a legal perspective, one first needs to look at the relevant provisions of the most important international instrument on biodiversity, namely the 1992 Convention on Biological Diversity (CBD). The provisions that more directly affect indigenous peoples are those focusing on the issues of access to genetic resources and in-situ conservation. Unfortunately, both sets of provisions set looser standards in connection with indigenous peoples' rights than those found in the central instrument protecting the rights of these peoples at the international level, namely the 2007 UN Declaration on the Rights of Indigenous Peoples ([UNDRIP](#)). Against this background, Cittadino's book takes up the challenge of developing a model of interpretation of States' obligations under the CBD capable of harmoniously incorporating indigenous peoples' rights. The book pays special attention to two sets of rights of indigenous peoples that the author considers central to the relationship between indigenous peoples and the environment: land rights, including rights over natural resources, and participatory rights, especially the right to consultation. Both sets of rights are, in turn, connected with the overarching right to self-determination. Inevitably, as the book suggests, the harmonization of some of these provisions with CBD standards will require some refinement to produce clear and coherent results. To this end, Cittadino uses the broader *principle of self-determination* as a tool to guide and facilitate this important process of clarification. Put simply, this should guarantee that, while indigenous peoples' rights may well need to be balanced with the objectives of the CBD, they cannot be restricted in such a way that would undermine their cultural integrity and capacity to exist as distinct groups.

The book is very well written and accessible. The author has demonstrated both an impressive knowledge of the two relevant legal regimes and capacity to navigate between, and provide solutions to some of, their most complex intricacies. Among its many merits, the book elaborates an interpretative model which carries extremely important practical consequences. This is crucial at a time when increasing attention must be paid to tackling those legal and practical barriers that may hinder the effective implementation of indigenous peoples' rights. The first International Law

Association's Committee on the Rights of Indigenous Peoples was created with the task of providing authoritative clarification and guidance in respect of the meaning and scope of the provisions of the UNDRIP. This committee operated between 2006 and 2012. It is telling that in 2013 a new committee was set up, this time with the goal of examining the actual process of implementation of the UNDRIP. In this context, CBD provisions require careful considerations because they may pose a challenge to the realization of indigenous rights as established in the UNDRIP. Against this background, Cittadino's work has the important merit of challenging the validity of claims according to which the regimes on biodiversity protection and indigenous peoples' rights represent essentially distinct and incompatible bodies of law.

Having said that, to what extent will States as well as relevant international and regional bodies subscribe to this view? In the case of [Kaliña and Lokono Peoples v. Suriname](#), the Inter-American Court of Human Rights, taking note of various international environmental law obligations, found that States must make sure that the establishment of protected areas comes with the respect of the right of indigenous peoples to a dignified life and to cultural identity. This seems to suggest that human rights bodies are legally equipped to promote a progressive reading of the regimes concerning the environment and indigenous peoples aimed at guaranteeing the protection of the latter. To what extent, instead, will bodies such as the CBD Conference of the Parties and the Conference of the Parties Serving as the Meeting of the Parties to the Nagoya Protocol succeed in promoting a coherent interpretation of CBD obligations capable of taking into full account the rights of indigenous peoples? And how persuasive will these views be? As Cittadino argues in her book, it will be important to monitor future State practice within the broad CBD regime. While some CBD parties may not necessarily support a dynamic and progressive interpretation of CBD standards in light of indigenous peoples' rights, CBD frameworks and principles can nevertheless become increasingly important in the protection of indigenous peoples' rights at the international level.

The book highlights also another important point that must be taken into account when assessing the relationship between the two regimes, namely that CBD standards appear occasionally more advanced in the protection of indigenous peoples' rights than international human rights standards. For example, the 2016 [Mo'otz Kuxtal guidelines](#) on consent and benefit-sharing from the use of traditional knowledge are more straightforward than international human rights law in affirming that the principle of free, prior and informed consent requires governments to obtain the agreement of indigenous peoples when acceding their traditional knowledge. This suggests that further interaction and cross-fertilisation may well occur. These are only some of the many interesting questions arising from the sophisticated discussions and considerations developed by the author. Anyone concerned with the future implementation of indigenous peoples' rights in connection with the regime on biodiversity protection should read this book.

Dr Mauro Barelli is senior lecturer at the City Law School of the University of London and teaches Public International Law and International Human Rights Law.

Cite as: Mauro Barelli, “Two opposing commitments? – Towards a synchronised protection of biodiversity and indigenous peoples’ rights”, *Völkerrechtsblog*, 29 June 2020.

